

CALIFORNIA COASTAL COMMISSION

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Filed: June 7, 2005
49th Day: Waived
Staff: EL-SD
Staff Report: December 20, 2005
Hearing Date: January 11-13, 2006

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approval with Conditions

APPEAL NO.: A-6-NOC-05-055

APPLICANT: Sea Breeze Carmel View LLC

PROJECT DESCRIPTION: Construction of two commercial office buildings totaling 125,000 sq.ft. (one, two-story and one, three-story) and a four-level subterranean parking structure with 453 parking spaces on a 5.4-acre site.

PROJECT LOCATION: South of SR 56, north of the San Diego Jewish Academy, at the southwest corner of Carmel Creek and Shaw Ridge Roads, North City, San Diego, San Diego County.

APPELLANTS: Coastal Commissioners Sara Wan and Patrick Krueer

SUMMARY OF STAFF RECOMMENDATION AT SUBSTANTIAL ISSUE PHASE:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. At the time the project was approved by the City, the City was also seeking approval of an LCP amendment that would affect development of the site. However, the LCP amendment had not yet been approved or certified at the time of the City's action on the coastal development permit. Although certification (with suggested modifications) of an LCP amendment by the Commission has subsequently occurred (July, 2005), the appeal is based on the certified version of the LCP at the time of City action. Moreover, grounds raised regarding biological resources, visual resources and traffic circulation still exist.

SUBSTANTIVE FILE DOCUMENTS: City of San Diego Certified Local Coastal Program (LCP); Appeal Forms submitted June 7, 2005; City of San Diego LCP Amendment No. 2-04C; City of San Diego CDP #7272/SDP #7273/ PDP #7275

I. Appellants Contend That:

When the City issued the Coastal Development Permit (CDP), the Commission had not yet acted on the associated, proposed Land Use Plan (LUP) and zoning amendments. Thus the project approved by the City was inconsistent with both the certified planning designation and then-current zone. In addition, the project was approved by the City with less than a 100-foot buffer between the development and an existing wetland, contrary to the Environmentally Sensitive Lands (ESL) regulations of the certified LCP, and potentially against the recommendation of the wildlife agencies. The project would also impact lands designated in the LUP (at that time) as open space and identified as part of the Multiple Habitat Planning Area (MHPA), and proposed mitigation for those impacts was located outside the coastal zone. Transportation issues were inadequately addressed, and a deviation from the 30-foot limit was obtained for building height. Finally, the project failed to provide adequate retail area as required in the certified LUP. The City also did not make adequate findings in these regards to demonstrate compliance with the certified LCP.

II. Local Government Action:

The coastal development permit was approved by the City of San Diego on November 30, 2004; however, the Notice of Final Action was not received in the San Diego District office until May 24, 2005. Specific conditions were attached that, among other things, address building height and color, outdoor lighting, construction of off-site street improvements, provision of some food and beverage service available to the general public, and provision of a public native garden along Carmel Creek Road.

III. Appeal Procedures:

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set

the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission finds the appeal to raise a substantial issue by default and will proceed to a de novo hearing on the merits of the project.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, certain proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-NOC-05-055 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will

result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-NOC-05-055 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

Findings and Declarations.

1. Project Description/Permit History. The project approved by the City of San Diego includes construction of two commercial buildings totaling 125,000 sq.ft., including 2,000-3,000 sq.ft. of retail use and the remainder in office use. The City-approved project is comprised of a 75,000 sq.ft. three story building, a 50,000 sq.ft. two-story building and a four-level parking garage, with three of the levels underground. Landscaping is proposed that includes native upland species within a wetland buffer area and planting of a native garden for public passive recreational use.

Significant portions of the property have been disturbed in the past for agricultural and equestrian uses, and remnants of old outbuildings and corrals remain on the site at this time. The proposed development is appealable to the Coastal Commission as it is located within 100 ft. of an off-site wetland area . The standard of review for the development is the certified LCP.

2. Non-Compliance with the Certified LCP. The City of San Diego has a certified LCP and has been issuing coastal development permits in its jurisdiction since 1988. Although the Carmel Valley Neighborhood 8 Community was an area of deferred certification at that time, it became fully certified in 1998, and the City of San Diego assumed coastal development permit (CDP) authority for Neighborhood 8, along with Neighborhood 8B and some lands outside any community plan area at that time. The City's LCP contains, among other things, the Neighborhood 8 Community Plan and the North City Planned District Ordinance, which govern development in this specific area of the City's coastal zone, along with the City's Land Development Code (LDC).

The first contention raised by the appellants is inconsistency with the designated land use and zoning for the subject site. The coastal development permit approved by the City (CDP #7272) allows for a commercial development on the site. However, at the time the City acted, the site was designated and zoned for residential and open space uses in the certified LCP. The residentially-designated area covered approximately one-fourth of the site and allowed for residential development at a very low density of 0-5 dwelling units per acre. The designated open space area covered the remainder of the 5.4-acre site. The LCP did not allow for commercial development on this site. In addition, the open

space designated portions of the site differed significantly from the open space approved by the City in the CDP, which included only .9 acres of the total site.

Another of the appellant's contentions relates to an inadequate wetlands buffer. The City's approval included a wetlands buffer smaller than the 50-foot buffer required in the Open Space Element of the certified LUP and the 100-foot buffer required in the ESL regulations of the LDC. The City's approval required a buffer ranging from 10 to 40 feet in width, and averaging only 30 feet overall. This was intended to protect an off-site riparian corridor on the Jewish Academy site, immediately south of the project's southern boundary. Both the LUP and LDC allowed for increases or decreases in buffer width, based on consultation with the wildlife agencies. The City maintains such consultation occurred, but the only written comments from U.S. Fish and Wildlife and CA. Department of Fish and Game recommend a full 40-foot buffer across the site.

Lastly, the appellants contend that transportation/traffic issues are not adequately addressed in the proposed development. On Page 43 of the certified LUP, Section E. Alternative Transportation Modes, states the following, in part:

“The Carmel Valley Community Plan stresses the importance of transportation alternatives to the private automobile, including public transit, bicycle travel and pedestrian movement. ... Utilization of alternative modes of transportation can conserve energy, lessen air pollution and reduce auto traffic volumes.”

On Page 65 of the certified LUP, Carmel Valley Goal 1.4. states,

“To establish a balanced transportation system which is used as a tool for shaping the urban environment.”

The site is expected to develop with medical offices, which will generate far more traffic than the currently designated very low density residential and open space land uses. Although some street improvements are identified, no alternative transportation program providing for non-automobile circulation is proposed, as is typical with this scale of office development.

In summary, the issues raised in the appeal include inconsistency with the certified LUP and zoning, inadequacy of the wetland buffer and inadequacy of traffic mitigation. As explained above, the City's CDP approval does not resolve these issues consistent with the certified LCP. Therefore, the Commission finds a substantial issue is raised by the grounds on which the appeals were filed.

STAFF NOTES:

The LCP has now been modified to change the LUP designation, several specific LUP policies, and the zoning. While the LCP is still the legal standard of review, the revised LCP, in general, allows for the proposed development. There are some areas where the

proposal is not fully consistent with the amended LCP (i.e., the wetland buffer and traffic management) concerns, and these are addressed through the attached special conditions.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-NOC-05-055 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final site plans, floor plans and elevations approved by the City of San Diego, incorporating the following changes:

- a. provision of a 40-foot minimum buffer between all proposed improvements (grading, structures, etc.) and the off-site wetland south of the site; and

- b. provision of a minimum 6,000 sq.ft. of retail commercial area to serve neighborhood demand, located on the ground floor of the three-story structure in the general vicinity of the lobby.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Traffic Demand Management Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, a detailed traffic demand management program (TDM program), designed to reduce single-occupancy automobile trips generated by the permitted facility during peak hours. The submitted program shall serve as the first year pilot for a permanent TDM program and shall include, but not be limited to, the following:

- a. Specific incentives for employees:
 1. Carpool/Vanpool Program including:
 - Preferential parking for carpools and vanpools
 - Emergency ride home for carpool/vanpool/transit users
 2. Shuttle to closest transit connection(s)
 3. Bike racks, lockers and showers
 4. Staggered work hours
 5. Discounted transit passes
- b. Description of program implementation:
 1. Survey of physicians and staff to identify commuting plans and needs
 2. Identification of responsible staff member to administer the program
 3. Distribution of information/education materials to employees and clientele
 4. Motivational events, awards, etc. for users of the program
 5. Compilation of baseline data prior to building occupancy of traffic counts and patterns on streets and intersections in the project vicinity
 5. Details on the operation of items identified in part a. above

With respect to #a.2 above, as part of the first year pilot program, the permittee shall provide a shuttle service to and from the Sorrento Valley Coaster Station, and possibly to and from the El Camino Real/Del Mar Heights intersection if City bus service is extended to that location in the future. The shuttle to the Coaster station shall be provided to serve employees and clientele for a minimum of one year, beginning with the opening of the facility. The pilot program shall identify all efforts to be undertaken to work with other local employers to promote shuttle ridership, and shall maintain detailed records of ridership, schedules, costs, etc. Said records shall be submitted to the Coastal

Commission at the end of the trial year, as part of the annual report and amendment request discussed below.

In addition, for the first year of the TDM program, the permittee shall establish a baseline, monitor all program components, including the shuttle, and submit a report to the Executive Director at the end of the first year of building occupancy. The annual report shall identify the streets, intersections, etc. that are most affected by traffic from the permitted development, and shall determine parameters by which to measure monitoring results in future years. The annual report shall include data on function and use of all elements of the pilot program, draw conclusions about the success/failure of the various program components, and make recommendations for adjustments, additions or deletions of components. Said recommendations shall be incorporated into a proposed amendment to this permit to establish a permanent TDM program for the facility. Failure to submit an amendment request to extend the TDM program within one year of building occupancy shall be a violation of this permit.

The permittee shall undertake development in accordance with the approved transportation demand management program. Any proposed changes to the approved transportation demand management program shall be reported to the Executive Director. No changes to the approved transportation demand management program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required

3. Exterior Treatment. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval in writing of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed commercial building. The color of the structure and roof permitted hereby shall be restricted to color compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones except as minor accents. All windows shall be comprised of non-glare glass.

The permittee shall undertake the development in accordance with the approved color board. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the color board shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final revised landscaping plan generally conforming with the layout of the "Exhibit A" landscaping plan per of San Diego CDP #7272, that shall include the following:

- a. A plan showing the type, size, extent and location of all trees, shrubs and groundcovers on the site.

- b. Only drought tolerant and native plant materials compatible with the adjacent upland and wetland habitats shall be utilized in the approved plant palette.
- c. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of construction.
- d. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the landscape plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Drainage and Polluted Runoff Control Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans approved by the City of San Diego, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) BMPs (or suites of BMPs) selected for use on this site shall be designed to treat, infiltrate or filter the amount of stormwater produced by the 85th percentile, 24-

- hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains.
 - (c) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
 - (d) Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
 - (e) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over its lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

The permittee shall undertake development in accordance with the approved drainage and runoff control plans. Any proposed changes to the approved drainage and runoff control plans shall be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Other Conditions Imposed By Local Government (CDP #7272; SDP #7273; PDP #7275). Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act. The conditions contained in this coastal development permit are in addition to the conditions imposed and required by the City of San Diego.

IV. Findings and Declarations.

1. Project Description. The project as approved by the City of San Diego includes construction of two commercial buildings totaling 125,000 sq.ft. of commercial development, including 2,000-3,000 sq.ft. of retail use and the remainder in office use. The City-approved project is comprised of a 75,000 sq.ft. three story building, a 50,000 sq.ft. two-story building and a four-level parking garage, with three of the levels underground. Landscaping is proposed that includes special treatments within a wetland buffer area and planting of a native garden for public passive recreational use. No changes to the project are proposed through this de novo hearing, except a verbal commitment by the applicant to expand the amount of retail area to 6,000 sq.ft., consistent with the certified LCP amendment.

The subject site is located both north and south of Shaw Ridge Road, west of Carmel Creek Road, within the Neighborhood 8 portion of the Carmel Valley community. A recent amendment to the Neighborhood 8 Precise Plan LCP Land Use Plan (City of San Diego LCP Amendment No. 2-04C) designated the portion of the property south of Shaw Ridge Road (4.5 acres) for neighborhood commercial uses and the 0.9 acre portion located north of Shaw Ridge Road, adjacent to the Carmel Valley Resource Enhancement Plan (CVREP) as open space. The property was also rezoned to accommodate the designated uses.

Significant portions of the property have been disturbed in the past for agricultural and equestrian uses, and remnants of old outbuildings and corrals remain on the site at this time. The standard of review for development in this area is the certified LCP. Any future development/modification of the site that modifies any aspect of this approval or is inconsistent with it would be processed by the Coastal Commission as an amendment to this permit.

2. Land Use. The portion of the subject site south of Shaw Ridge Road, comprising 4.5 acres where the subject development is proposed, is now both designated and zoned for neighborhood commercial uses. Medical offices are an allowed use in neighborhood commercial areas, along with other community-oriented facilities like grocery stores, pharmacies, delis, dry cleaners, convenience stores, etc. The subject site is the only property in Carmel Valley Neighborhood 8 to accommodate commercial uses; the remainder of the community consists of various residential uses, open space, agricultural/equestrian uses and a K-12 private school. The community is separated from other commercial uses to the north by SR 56 and the associated Carmel Valley Resource Enhancement Program (CVREP) area, and to the south and west by other open space systems and residential development.

This results in neighborhood residents having to go outside the community to avail themselves of services typically found closer to home. The City required that a minimal area be set aside for retail uses and that this area be available to the public, not just building occupants. The City-approved permit for 125,000 sq.ft. of commercial office space included 2,000 sq.ft. near the ground-floor entrance anticipated to offer limited food services. The amount of area was consistent with the then-certified LUP which

required “up to 8% of the building square footage of the entire site” for such uses. Recognizing the specific non-retail pattern in this community, the Commission adopted a suggested modification to the LUP, such that it now states:

“The accessory component shall comprise no less than a total of eight percent (8%) of the building square footage of the entire site.”

The Commission made this requirement to help reduce vehicle trips by providing some neighborhood retail services within the community, and within walking distance of many residents. Under this new LUP provision, an additional 4,000 sq/ft/ of retail services must be provided. Special condition #1 requires the applicant to submit final, revised plans showing the provision of a total of 6,000 sq.ft. of retail area available to the general public. As conditioned, the Commission finds the proposal consistent with the certified LCP for this community.

3. Traffic/Parking Issues/Traffic Demand Management Program. Several certified LUP policies address various traffic issues. Following are several examples:

On Page 35 of the amended LUP, the first paragraph under Park and Ride/Transit center states:

A park and ride facility and transit center are proposed within the Caltrans right-of-way at I-5 and Carmel Valley Road. The park and ride facility has been constructed. The location is not within the CVREP improvement area. The facility’s primary purpose is to encourage transit alternatives to traditional vehicular travel.

On Page 38 of the amended LUP, the Parking section states, in part:

Adequate parking facilities will be provided within each individual development in conformance with applicable zoning requirements and guidelines. ... Bicycle parking facilities will be provided adjacent to high activity areas.

Parking lots will be integrated into the overall design of the projects they serve. Flow patterns for motorists, bicyclists, and pedestrians will be considered. ...

On Page 40 of the amended LUP, the Transportation Demand Management section begins:

To further minimize the impacts of large commercial/office development, any proposal to develop the Neighborhood Commercial area shall include a Transportation Demand Management Program (TDM).

The subject property is vacant at this time, but has had agricultural and equestrian uses in the past, and some remnants of outbuildings and corrals remain on the site. These facilities were associated with an existing equestrian operation located across Carmel Creek Road to the east.

Carmel Creek Road, a north-south, two-lane collector street at its terminus, is the only means of access and egress from the existing 348-unit apartment complex to the south, and the only means of access to SR 56 to the north, from this part of Carmel Valley. It also provides the main entry and exit point of the Jewish Academy, which accommodates a roughly 1,200 person student body, as well as teachers and staff. Both the school and apartment uses contribute to peak hour impacts on weekdays, and potential peak hour impacts on the weekends for recreational purposes, including beach access, although the shoreline itself is a couple miles to the west. SR 56, a six-lane freeway, is itself a major coastal access route used by numerous inland communities in the North City area, both inside and east of the coastal zone.

The degree of adversity of traffic impacts is somewhat dependent upon the type of office use that ultimately is developed. An insurance office, for example, would generate most of its traffic during peak hours, when the circulation system is already strained, whereas medical offices tend to generate relatively level amounts of traffic throughout the day. Most retail uses also generate this steady, rather than peak, pattern of traffic flow. Residential uses, on the other hand, generate primarily peak flow traffic, with people coming and going to work at relatively similar hours. However, since the currently certified residential use can only generate two or three units, no significant traffic impacts would result from buildout under the current LUP.

The City addressed traffic impacts in their review of the CDP for the project. The location of egress and exit points on a property can influence traffic congestion. The City has required all access be taken from Shaw Ridge Road, rather than Carmel Creek Road. In conjunction with other traffic improvements, this tactic will lessen traffic conflicts with residents and school users who rely on Carmel Creek Road for their access. They also required some adjacent street improvements to ease traffic flow, but did not require any program to reduce traffic volume. In the past, other City communities have required commercial facilities (primarily offices) to provide a Traffic Demand Management Program (TDM). This is a mechanism used to reduce traffic impacts from an individual development by reducing peak hour flows and promoting transit use. It has been applied to developments of as little as 20,000 sq.ft. of office use; the amount of office use on the subject site is proposed at 125,000 sq.ft.. The recent amendments to the Carmel Valley Neighborhood 8 LUP now require a similar program for the subject commercial use, intended to reduce peak flows by at least 20% over what would occur with everyone driving alone.

Most acceptable TDMs include a number of different tactics to reduce traffic concerns. Some examples are carpooling incentives and assistance, transit subsidies or free passes, shuttle service to major transit centers, flexible work hours and bicycle racks with shower facilities. The buyer of the property is willing to draft and implement a formal program that would be consistent with the certified LUP, and has informally submitted some ideas and implementation techniques. The buyer operates many similar medical facilities to that proposed on the subject site throughout southern California, and has TDM programs established at many of them.

There is no public transportation currently available in Neighborhood 8 itself, although streetscapes must be designed to accommodate bus stops in anticipation of possible future transit service. This lack of public transit in Neighborhood 8 makes it all the more imperative that individual commercial developments provide private alternatives to the single-occupancy vehicle mode of travel. The City should further provide incentives to allow as many as possible of the TDM measures to be extended to serve the entire community to reduce traffic impacts and out of community car trips. The closest transit center is the Sorrento Valley Coaster Station. It is more than a mile distant from the site, but is served by light rail and ten bus routes. There is also the possibility that transit service may be extended to the Del Mar Heights Road/El Camino Real intersection in the near future, which is closer than the transit center, but still some distance from the subject site.

Special Condition #2 requires submittal of a final TDM program for the subject site. The condition identifies what components must be included, and requires detailed descriptions about how the various components will be implemented. The condition provides for a first-year pilot program to establish parameters for future measurement of success or failure, and further requires ongoing monitoring with annual reporting to determine what program improvements or component modification is needed to meet the goals established in year one. A component requires the applicant to provide a shuttle between the site and the Sorrento Valley Coaster Station and potentially to the nearest transit stop if it is provided. The applicant does not believe it is economically viable to implement this component based on the relatively small number of employees (under 100) and the staggered work hours these employees will operate under. Additionally, the applicant does not believe the site will generate enough peak hour travel to support a shuttle operation, and further believes that the shuttle itself will have adverse air quality impacts if it is run continuously to accommodate patients and employees due to the staggered nature of medical appointments and work hours.

To try and make a shuttle operation more viable, the condition requires the applicant to work with other nearby employers to see if the shuttle could be made community- or region-wide to attract additional ridership. Also, a bus route that would come closer to the site than the Sorrento Valley Coaster Station is being considered by the City as a potential future addition to the public transportation network. Should this route become established, that can be taken into consideration in the future amendment after a year of operation of the TDM program. Finally, the applicant must submit an annual report to the Executive Director after one year to review all components of the program and make changes if deemed necessary. An amendment request to extend the TDM program must be submitted to the Commission within one year after occupancy of the building.

The proposed development will provide a four-level parking structure located between the two proposed office buildings. Three levels will be underground, with only the top level visible as surface parking. A total of 453 parking spaces will be provided; this number is consistent with the City's certified zoning requirements for facilities of this

size. Moreover, the project plans include bicycle accommodations and pedestrian amenities, consistent with the cited LUP policy.

Through the City's action, and as proposed herein by the applicant, the project will also provide some pedestrian amenities, such as walkways, benches and the provision of some retail goods and services. With the attached special conditions, the Commission finds the proposal adequately addresses alternative transportation techniques, and, through monitoring, will analyze those techniques to determine what works best in this area and/or for this type of facility. Therefore, as conditioned, the Commission finds the proposal consistent with the cited policies of the certified, and recently amended, Carmel Valley Neighborhood 8 LUP.

4. Biological Resources and City Mitigation Requirements. The following policy in the introduction to the Open Space Element of the certified Carmel Valley Neighborhood 8 LUP is most pertinent to the subject development proposal, and states:

There shall be no net loss in the coastal zone of sensitive biological resources, including but not limited to coastal sage scrub, southern maritime chaparral and native grasslands, that are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. Mitigation for impacts to any of these habitat types, when permitted, shall include creation or substantial restoration of areas where effective function of habitat type have been lost, to achieve the no net loss standard. Mitigation for impacts within the coastal zone should be provided within the coastal zone in order to have no net loss of habitat within the coastal zone. Mitigation measures on land outside the coastal zone may be acceptable if such mitigation would clearly result in higher levels of habitat protection and value and/or would provide significantly greater mitigation ratios and the mitigation is part of the MHPA . Land area inside and outside the coastal zone which serves as mitigation for habitat impacts in the coastal zone shall be permanently retired from development potential and secured as part of the MHPA preserve management plan, through open space zoning and/or other means, as a condition of development approval.

The proposed development would have no significant direct impacts on ESHA, since no ESHA has been designated on the subject site. Pursuant to the Coastal Act, the Commission determines what is ESHA both by habitat type and function. Because of the criteria the City uses for identifying Tier I and Tier II habitat, most areas that are identified by the City as Tier I or Tier II habitat constitute ESHA under the Coastal Act, particularly when they are undisturbed, high quality habitat used by listed species and/or contiguous with other ESHA or located within wildlife corridors. In this particular case, there is an area of coastal sage scrub (Tier II) in the center of the site. However, this has been disturbed and degraded through past uses on the site and the introduction of non-native species. In addition, the site does not support any listed species, this area is not contiguous with any nearby ESHA and it is disconnected from the CVREP riparian corridor by a 50-foot buffer and an existing road.

Although there is some fragmented Tier II vegetation present, the Commission's staff ecologist has determined the vegetation in these areas does not meet the definition of ESHA. Based on this opinion, the Commission approved an LCP amendment request that modified the MHPA boundaries on this site, as well as applying neighborhood commercial zoning to the entire property south of Shaw Ridge Road (i.e., the 4.5 acres proposed for development herein).

Through the City-approved combined Coastal Development Permit(CDP)/Site Development Permit(SDP)/Planned Development Permit(PDP), however, the applicant is required to mitigate for the loss of 2.7 acres of designated MHPA lands. Part of the mitigation consists of enhancement of the existing on-site, open space area north of Shaw Ridge Road, which is contiguous with the CVREP open space system. The remainder of the mitigation is proposed in Soledad Canyon, which is outside the coastal zone. This mitigation component includes purchase and restoration of this site, which is within the designated MHPA but outside the coastal zone. These lands are immediately upstream of the coastal zone within the Los Penasquitos Lagoon watershed, and their restoration will benefit downstream resources within the coastal zone. Use of these lands as mitigation for impacts to the MHPA is consistent with the requirements of City's MSCP and is required by an authority other than the Coastal Act. As indicated above, there are no impacts to ESHA within the coastal zone associated with the proposed development.

However, the proposed development does raise a concern regarding the adequacy of proposed wetland setbacks/buffers. The following policy of the certified LUP applies to this site, and states:

In addition, a wetland buffer shall be maintained around all wetlands as necessary and as appropriate to protect the functions and values of the wetland. Wetland buffers should be provided at a minimum 100-foot distance adjacent to all identified wetlands and 50-foot distance adjacent to riparian areas. The width of the buffer may be either increased or decreased as determined on a case-by-case basis, in consultation with the California Department of Fish and Game, taking into consideration the type and size of development, the sensitivity of the wetland resources to detrimental edge effects, natural features, such as topography, and the functions and values of the wetland and the need for upland transitional habitat. Developments permitted in wetland buffer areas shall be limited to access paths, passive recreational areas, fences and similar improvements necessary to protect the wetland, and such improvements shall be restricted to the upper/inland half of the buffer zone.

There is a small riparian corridor along and within a drainage ditch just south of the property line on the adjacent Jewish Academy site. It is believed this wetland was created by truck-washing operations at a sand mining facility that previously existed south of the site, and persist today due to runoff from the same area. Regardless of its origin, the riparian area meets the Commission's definition of wetlands, and would typically require a minimum 100-foot buffer under the certified IP. The adjacent Jewish

Academy site was developed, however, before the current IP was in place, at a time when required riparian buffers were often 50 feet in width. As cited above, the LUP requirement in this community is still 50 feet for riparian, although the Environmentally Sensitive Lands (ESL) regulations of the certified LCP Implementation Plan combine all types of wetlands together and require 100-foot wetland buffers.

The City ultimately permitted development of the Jewish Academy in 1998 with a buffer ranging from 0 to 25 feet in width, with an average width of 10 feet. At that time, however, it should be noted that the riparian area did not meet the City's definition of a wetland. Under the new IP, it is considered a wetland by the City, and was addressed that way in the City's action on the subject site during its review of the LCP amendments and associated local permits. A reduced buffer was approved by the City for several reasons, including the fact that there is an elevational difference between the wetland and the Sea Breeze site such that the Sea Breeze site cannot drain into the wetland. There is an existing dirt road along the southern border of the subject property, providing some separation; and there is an 8-foot berm separating portions of the wetlands from the site. The wetland itself is discontinuous and does not connect with any other body of water or flow into the CVREP riparian corridor. Finally, the question of equity was raised at the City level between the subject site and the Jewish Academy site.

The applicant is proposing a wider buffer area than that provided by the Jewish Academy, but it is still well less than the 100 feet required in the certified IP, and even less than the 50-foot requirement in the certified LUP. The proposed buffer would vary between 10 and 40 feet in width, and would average 30 feet over its full length. In comments on the Mitigated Negative Declaration, the wildlife agencies (U.S. Fish and Wildlife Service and California Department of Fish and Game), in a combined response, agreed that 40 feet would be adequate based on site-specific circumstances, but that was based on the assumption that the entire buffer to be 40-feet wide, not just portions of it (see attached comment letter). Based on recent contacts with these agencies, a full 40-foot buffer is still recommended. When the wetland was first addressed in 1998, it consisted of a few willows and cattails interspersed with pampas grass, eucalyptus trees and other exotic vegetation. Based on a recent site visit, the area is now dominated by willow trees, with little evidence of remaining exotic species. The staff ecologist supports the wildlife agencies in their recommendation of a minimum 40-foot buffer for this site.

In summary, the Commission finds that no ESHA exists on the subject site, which has been rezoned through a previous action for commercial development. Mitigation required for the loss of MHPA lands is adequately addressed through the City of San Diego CDP approval. Although the proposed wetland buffer is less than typically required (i.e., 100 feet), a reduced buffer in this area is accepted by the wildlife agencies and the staff ecologist, and as such, would be consistent with the LCP. However, the reduced buffer must still be a minimum of 40-feet in width for the length of the adjacent wetland in order to be so consistent. Therefore, with provision of a wider buffer required in Special Condition #1, the Commission finds the project, as conditioned herein and by the City, consistent with the cited LUP policy.

4. Visual Resources. On Page 48 of the certified LUP, the following policies apply to the proposed development:

As indicated in the environmental constraints map (Figure 3), several visually significant hillsides occur on the valley's north facing slopes. These hillsides provide the valley with a significant visual element. These hillsides will be maintained in their natural state pursuant to the sensitive slope criteria as written in this precise plan (Chapter VIII).

To preserve views to these hillsides from public vantage points such as SR-56 and the CVREP multi-use trails, permitted structures shall not exceed 35 feet in height. Where no views of the natural hillsides and sandstone bluffs would be adversely affected, higher buildings may be allowed.

The cited policies emphasize the protection of public views and provide that new development shall be compatible with the existing development and natural landforms. The siting of development is critical and must preserve the southern hillsides as a backdrop. As recently amended, the plan sets a specific height limit of 35 feet on development in Neighborhood 8, but allows exceptions in certain cases. For the Sea Breeze property, which is the only proposed commercial site in Neighborhood 8, taller structures may be acceptable if they are sited in such a way as to be subordinate to the natural setting and/or to not interfere with existing public views of the hills/landforms south of the site. The Sea Breeze property is visually backed by the existing Jewish Academy, which includes buildings as tall as 60 feet. The developed portions of the Academy site also sit at an approximately 30-foot higher elevation than the highest point of the Sea Breeze site. Thus, structures of greater than thirty feet in height could be found consistent with the certified LCP if the existing Jewish Academy, rather than the natural hills, forms the backdrop, and views of those hills are not further diminished.

Other typical visual issues address building materials and colors, architectural design, lighting, signage and landscaping. These are all adequately addressed through the City's conditions of approval of the combined CDP/SDP/PDP permit, and are reiterated in Special Conditions #3 and #4 of this permit. Therefore, the Commission finds this highly scenic site, visible from public recreational trails and major coastal access routes, has been appropriately designed to maintain existing public views, and is thus consistent with the cited LUP policy.

5. Water Quality. The subject site is located within the Los Penasquitos Lagoon watershed, and all areas proposed for development are located south and upland of the streambed of Carmel Creek and the CVREP restoration area. The proposed commercial development on this site will significantly increase the amount of impervious surfaces, as well as introduce additional pollution in the form of hydrocarbons and car emissions. The Design Element of the subject certified LUP, addresses grading and drainage concepts in detail. Proposed amendments require all development to incorporate BMPs consistent with storm water management regulations of the LDC in all project designs,

and during construction activities. These regulations incorporate the 85th percentile standard now adopted by the Regional Water Quality Control Board, Coastal Commission, and the City of San Diego in its LDC.

The City issued combined CDP/SDP/PDP for this development adequately addresses this issue, and has conditioned the local discretionary permit in this regard, requiring final plans consistent with preliminary erosion control, grading and drainage plans. These plans include filtration devices on all catch basins, along with landscaping strips to further filter runoff. The conditions also require proof from the State Water Resources Control Board that the proposed improvements are fully consistent with Order No. 99-08, the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), and the Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity. A Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan have also been prepared, as required. In addition, the City has incorporated the Commission's typical water quality/runoff control provisions to this permit in Special Condition #5. Therefore, the Commission finds the proposed development, as conditioned, is fully consistent with the recently amended LUP and with the certified LCP as a whole.

6. Local Coastal Planning.

Due to the recent LCP amendment, the subject site is now zoned and designated for neighborhood commercial uses and open space. The certified LCP contains policies that address protection of sensitive and visual resources, and maintenance of public access by providing adequate parking, street improvements and a TDM program to encourage alternative forms of transportation. Special Condition #6 advises the applicant that the conditions of the subject coastal development permit are in addition to the conditions required by the City of San Diego in their combined discretionary action and does not have any effect on conditions imposed by the City of San Diego for the subject development. Therefore, the Commission finds that approval of the proposed development, as conditioned, is consistent with the certified LCP, and will not prejudice the ability of the City of San Diego to continue implementation of the LCP.

7. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the policies of the City of San Diego certified LCP, which is the legal standard of review for this appeal of a local decision. Mitigation measures, including conditions requiring a TDM program, submittal of final plans, and incorporation of all conditions of the City

permit, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.